

OLC 74-0400

13 March 1974

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Age Non-Discrimination in Government
Legislation

1. The Fair Labor Standards Amendments of 1974 (Minimum Wage Bill) S. 2747 passed the Senate on 7 March with an age non-discrimination amendment by Sen. Bentsen (D-Tex). The amendment extends the Age Discrimination Act of 1967 to cover all applicants and employees in Executive departments and agencies. The Civil Service Commission is granted the enforcing authority and any aggrieved person may bring court action. The CSC may make "reasonable exemptions" and establish a maximum age requirement if age is a bona fide occupational qualification necessary to the performance of duties of a position.

2. This bill is very controversial. It passed early in the session, was vetoed and the veto sustained. H. R. 12435, the House version now before Education and Labor Committee contains the same provision as the Bentsen Amendment. It has been reported favorably by a subcommittee. If the bill becomes law, all Agency personnel actions involving age as a factor, particularly the Agency's arbitrary age sixty retirement policy will undoubtedly be affected. It is doubtful that the Agency could exempt all positions through CSC action. Perhaps all positions under CIARDS could be included since the needs of clandestine service demand an early retirement program.

3. It would seem more advisable and consistent to seek the same language for legislative history in the Committee report as did Lyle in the committee conference report of the Equal Employment

Opportunity Act of 1972, which precludes discrimination in all executive agencies on the basis of race, color, religion, sex or national origin. This language is as follows:

"In providing the statutory basis for such appeal or court access, it is not the intent of the Committee to subordinate any discretionary authority or final judgment now reposed in agency heads by, or under, statute for national security reasons in the interests of the United States."

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